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FILED
DISTRICT COURT OF GUAM

NOV 10 2005

MARY L.M. MORAN
CLERK OF COURT

12
13 IN THE UNITED STATES DISTRICT COURT
14 DISTRICT OF GUAM

15 JULIE BABAUTA SANTOS, et. al.,

16 Petitioners,

17 -v-

18 FELIX P. CAMACHO, etc., et. al.

19 Respondents.
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CIVIL CASE NO. 04-00006

**THE GOVERNOR OF GUAM'S
REPLY TO THE FILING BY THE
NON-PARTY *SIMPÃO* PLAINTIFFS
IN REGARD TO THE GOVERNOR OF
GUAM'S OBJECTIONS TO THE
SEPTEMBER 19, 2005
MAGISTRATE'S ORDER**

ORIGINAL

1 On November 3, 2005, certain non-parties to this action, the plaintiffs in the action
2 entitled *Simpao, et al. v. Govt. of Guam*, Guam District Court Civil Case No. 04-00049 (the
3 “*Simpao* Plaintiffs”), acting without leave of Court, filed a brief in this action regarding the
4 Governor of Guam’s Objections to the September 19, 2005 Magistrate’s Order.

5 As they admit in their brief, the *Simpao* Plaintiffs are merely “putative class members
6 here,” not parties (*Simpao* Br. at 2.) As such, the *Simpao* Plaintiffs are not entitled to file briefs
7 in this action (except as specifically provided under FRCP 23(e)(4)(A) in regard to the future
8 fairness determination and approval of the settlement). Indeed, on August 5, 2004, the Court
9 denied the effort of *Simpao* plaintiff Christina Naputi (utilizing the same counsel as here) to
10 intervene in this action. The Court held that she and other putative class members would have the
11 opportunity to raise their “concerns at the fairness hearing.” (August 5, 2005 Order at 5.) The
12 Court also held that, until then, they were “adequately represented” in these proceedings by
13 plaintiff Santos. (*Id.* at 7.) The Court further reasoned that allowing intervention would only
14 unnecessarily delay final disposition of this case. (*Id.* at 8.)

15 In their brief, the *Simpao* Plaintiffs concede that they are not parties to this action, but
16 emphasize that they have “properly filed a statement of representation and notice of appearance in
17 this action.” (*Simpao* Br. at 2, n.1.) That filing does not confer upon the *Simpao* Plaintiffs any
18 right to file their present brief. In fact, the Court recognized their statement of representation “as
19 a mere ‘courtesy notice’” of the *Simpao* Plaintiffs’ “intent to be represented by counsel separate
20 from Petitioner’s counsel.” (September 20, 2005 Order at 3.) Furthermore, the Court expressly
21 “caution[ed] Mss. Naputi and *Simpao* and their counsel that it will not permit the Representation
22 Statement and Entry of Appearance to circumvent the previous denial of Ms. Naputi’s motion to
23 intervene.” (*Id.*) Obviously, this warning has not been headed.

24 Lastly, the filing by the *Simpao* plaintiffs, made the day before the Governor’s reply brief
25 was due, essentially duplicates the arguments the Attorney General made one week earlier. And,
26 unless the Court instructs otherwise, the Governor does not believe it would be proper for him to
27 respond to such arguments, as the result only will be unnecessary briefing that will burden the
28 Court with sorting through arguments by non-parties. He will therefore not respond to these

1 arguments (although again, they essentially follow the Attorney General's brief) unless the Court
2 so instructs.¹

3 DATED this 10th day of November, 2005.

4 OFFICE OF THE GOVERNOR OF GUAM
5 CALVO & CLARK, LLP
6 Attorneys for Respondent
7 *Felix P. Camacho, Governor of Guam*

8 By: 

DANIEL M. BENJAMIN

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23 ¹ A couple quick points, simply to protect the record: First, the *Simpao* Plaintiffs cite the
24 Governor's decision to move to intervene as opposed to substituting as counsel in *Simpao*.
25 (*Simpao* Br. at 8.) Obviously, the reason for this is that there are existing orders in *Santos*
26 establishing his right to be present on equivalent facts in *Simpao*, but until this disqualification
27 motion is determined, the issue of the Governor's right to substitute counsel remains undecided.
28 There seemed no reason to litigate this same issue in both cases simultaneously. In any case,
asserting one alternative right does not foreclose another. Second, the *Simpao* Plaintiffs argue
that "past practice on Guam" indicates that the Attorney General, and not the Governor,
represents the Government in tax litigation. (*Simpao* Br. at 4, 7.) But, past practice also was that
the Attorney General's actions were consistent with the Governor's tax policy. The Governor is
aware of no tax cases until this series of EIC cases where there was a divergent policy between
the two offices.